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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 272

RICHARD MORFORD,

Petitioner,

vs.

THE UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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INDEX

Subject Index

	Page
Petition for writ of certiorari	1
Opinion below	1
Statement of matter involved	2
Jurisdiction	17
Statute and Resolution involved	17
Questions presented	18
Reasons for granting the writ	20
Conclusion	25

Table of Cases Cited

A.C.A. v. *Douds*, 339 U. S. 382	21
Barsky v. *U. S.*, 167 F. (2d) 241	23, 24
Brandhove v. *Tenney*, 183 F. (2d) 121	20, 24
Chapman, Re, 166 U. S. 661	21
Eisler v. *U. S.*, 335 U. S. 857, 338 U. S. 189	23
Josephson v. *U. S.*, 165 F. (2d) 821	23
Jurney v. *MacCracken*, 294 U. S. 125	20, 21
Kilbourn v. *Thompson*, 103 U. S. 168	21
McGrain v. *Daugherty*, 273 U. S. 135	21
Maryland v. *Baltimore Radio Show*, 338 U. S. 912	23
Morford v. *U. S.*, 176 F. (2d) 54, 339 U. S. 258	2, 3, 14, 15, 16
Sinclair v. *U. S.*, 279 U. S. 263	21
Thomas v. *Collins*, 323 U. S. 516	22
W. Va. Bd. of Ed. v. *Barnette*, 319 U. S. 624	22

Statutes and Miscellaneous Cited

A.B.A.J., Vol. 34, p. 15	24
Baylor L. Rev., Vol. 1, p. 212	24
Civil Rights Act (8 U.S.C. secs. 43 and 47(3))	25
Columbia L. Rev., Vol. 47, p. 416	24
Constitution of the United States:	
First Amendment	19, 20
Fourth Amendment	20
Fifth Amendment	19, 20

	Page
Sixth Amendment	19
Ninth Amendment	19, 20
Tenth Amendment	19, 20
Cornell L. Q., Vol. 33, p. 565	24
Georgetown L. J., Vol. 37, p. 104	24
Harvard L. Rev., Vol. 60, p. 1193	24
House Resolution No. 5, 79th Cong., 1st Sess., 91 Congressional Rec. 10, 15 (1945)	17, 19
Illinois Law Rev., Vol. 43, p. 253	24
Legislative Reorganization Act, Sec. 121(b) (60 Stat. 828)	18
Mich. L. Rev., Vol. 46, p. 521, Vol. 47, p. 191	24
Nebraska L. Rev., Vol. 27, p. 808	24
Revised Statutes, Section 102, as amended by the Act of June 22, 1938, 52 Stat. 942, 2 U.S.C. sec. 192	1, 17
Rutgers Q. L. Rev., Vol. 2, p. 125	24
Southern California L. Rev., Vol. 22, p. 464	24
Texas L. Rev., Vol. 26, p. 816	24
United States Code, Title 28, sec. 1254	17
University of Chicago L. Rev., Vol. 14, p. 256; Vol. 15, p. 544	24
University of Cincinnati, L. Rev. Vol. 17, p. 264	24

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Richard Morford prays that a writ of certiorari issue to review a decision of the United States Court of Appeals for the District of Columbia, rendered July 27, 1950, which affirmed a judgment of the United States District Court for the District of Columbia convicting petitioner of violating Rev. Stats. Sec. 102, as amended by the Act of June 22, 1938, 52 Stat. 942, 2 U.S.C. Sec. 192, and sentencing petitioner to three months' imprisonment and a fine of $250.

Opinion Below

The opinion of the Court of Appeals has not yet been reported, but appears in the record at 138-140. The opinion affirmed per curiam on the authority of the court's decision affirming a prior conviction of petitioner under the present

indictment (*Morford* v. *United States,* 176 F. (2d) 54), and it is the earlier opinion, therefore, which sets forth the reasoning of the Court of Appeals. The first *Morford* decision was reversed by this Court on a point not now in issue (*Morford* v. *United States,* 339 U. S. 258.)

Statement of Matter Involved

Richard Morford, the petitioner, is, and was on the key date of the indictment, the Executive Director of the National Council of American-Soviet Friendship, Inc. He was indicted on two counts for contempt of the House Committee on Un-American Activities in refusing on March 6, 1946, to produce, pursuant to the Committee's summons, certain records of the Council and in refusing to inform the Committee of the names of the members of the Council's publications committee. The indictment, stripped of purely formal provisions, reads as follows:

> Richard Morford was summoned as a witness by authority of the House of Representatives, through its Committee on Un-American Activities, to produce before the said Committee records upon the matter under inquiry committed to said Committee by the Resolution aforesaid, that is to say, all books, records, papers and documents showing all the receipts and disbursements of money by the National Council of American-Soviet Friendship, Inc., and all correspondence, memoranda and communications with any and all persons, together with a complete list of all affiliated organizations, for the year 1945. He appeared before the said Committee at its session in the District of Columbia on March 6, 1946, but then and there refused to produce the said record upon the matter under inquiry and thereby wilfully made default.
>
> Richard Morford . . . was asked by the Committee who were the members of the publications committee of the National Council of American-Soviet Friendship, Inc., which prepared and edited a publication

known as "Reporter," which question was pertinent to the inquiry which the Committee on Un-American Activities was then conducting . . . and Richard Morford refused to answer that question (R. 1-2).

This petition is addressed to the second conviction of petitioner under this indictment, the first conviction having been reversed by this Court on a point not now in issue (*Morford* v. *United States,* 339 U. S. 258).

The Council was organized in March 1943 for the purpose, as expressed in its corporate charter: "To promote better understanding and strengthen friendly relations between the United States and the Soviet Union as essential to the winning of the war, and the establishment of world-wide democracy and enduring peace." (Gov. Exh. 10.)

During the period from its inception to March 1946, the date of the alleged contempt, the Council carried out an extensive program in support of its objective. Thus, the Council prepared and circulated widely through museums, libraries, schools and colleges a series of exhibits, photographic and otherwise, on life in the Soviet Union. It issued numerous pamphlets on the Soviet Union and American-Soviet relations, which were sold at book stores and public meetings. It publicized films dealing with the Soviet Union, broadcast radio plays, conducted a speakers' bureau, held public meetings attended on occasion by high government officials of the United States, Great Britain, and the U. S. S. R., issued statements of prominent persons counteracting specific anti-Soviet propaganda, published various periodicals and bibliographies.

The Council's activities were in large part in cultural fields, and much of its work was carried on by professional cultural committees, composed of leading figures in their respective fields of endeavor. Some of these committees and examples of their functioning were as follows: Artists

Committee, Paul Manship, chairman, which with the New York Metropolitan Museum of Art sponsored at the Museum an exhibition of "Soviet Artists in the War"; Architects Committee, Harvey Wiley Corbett, chairman, which sponsored exhibits on Soviet architecture at the Architectural League in New York, at Cornell University, and elsewhere; Dance Committee, Agnes DeMille, chairman, which exchanged material on the dance with dance groups in the Soviet Union; Music Committee, Dr. Serge Koussevitzky, chairman, which arranged for special concerts and broadcasts of Russian music and the transmission of records to the Red Army; Theater Committee, headed by Margaret Webster, which periodically issued for Soviet theater artists a publication "Notes on the American Theater" and which sent to the Soviet Union scripts of current American plays; Science Committee, headed by Professor Walter B. Cannon and Gilbert N. Lewis, honorary chairmen, and Dr. L. C. Dunn, chairman, which collected and sent books and materials to the destroyed libraries of universities in the Soviet Union; Education Committee, headed by Herbert Davis, President of Smith College, which organized the "Workshops of the Soviet Union," held at the Harvard Graduate School of Education; and Committee of Women, headed by Mrs. Joseph E. Davies, honorary chairman, which assembled and sent to the Soviet Union a model exhibit of clothing and furniture for the pre-school child and a mother-and-child-care library (R. 43, 49, 54, 58, 61, 71-77; Def. Exhs. 14, 38, 60).

During the period here involved, March 1943 to March 1946, the Council's program of promoting friendship and co-operation between the United States and the Soviet Union was in accord with the official foreign policy of the United States government and had widespread popular support. The Council limited itself to promoting American-Soviet Friendship and took no position on domestic issues or on the merits of the form of government of the U. S. S. R.

or of the United States. As a result of these factors, the Council attracted a wide group of supporters and sponsors [1] and received the cooperation and endorsement of the State Department and high government officials (R. 43-51, 57, 62-65, 68, 70, 72-77, 87-89, 94-96). Thus radio plays prepared and broadcast by the Council were rebroadcast by the OWI. A mass meeting conducted by the Council in Madison Square Garden in November 1943 was addressed by, among others, Secretary of the Interior Ickes and Donald M. Nelson, head of the War Production Board. The Council's Madison Square Garden mass meeting of November 1944 was chaired by Joseph E. Davies and addressed by, among others, Acting Secretary of State Stettinius and the Earl of Halifax. Messages to the meeting were received from, among others, President Roosevelt, Vice-President Wallace, Treasury Secretary Morgenthau, Agriculture Secretary Wickard, War Secretary Stimson, and Generals Eisenhower, Devers, and Patch. Secretary Morgenthau and Major-General Kuter were among the principal speakers at the Council's Red Army Day Dinner held on February 22, 1945. Loy Henderson of the State Department spoke at the Council's American-Soviet War Exhibit in June 1943. On November 14, 1945, the Council's Madison Square Garden rally was addressed by Under-Secretary of State Dean Acheson and received warm messages from President Truman, General Eisenhower, and Admiral King (R. 45, 47, 53, 73-75, 87-89, 93; Def. Exhs. 3A, 3B, 22, 30, 53, 60).

Just before this November 14, 1945, rally, the Committee on Un-American Activities, then a premature advocate

[1] Thus, the Council's sponsors included Maxwell Anderson, Joseph Clark Baldwin, Oscar L. Chapman, Dr. Karl Taylor Compton, Joseph E. Davies, Prof. Albert Einstein, Mrs. Borden Harriman, Harold L. Ickes, Helen Keller, Raymond Massey, Dr. Wesley C. Mitchell, Bishop Arthur W. Moulton, James E. Murray, Eugene O'Neill, Bishop G. Bromley Oxnam, Claude D. Pepper, Elmer Rice, Leopold Stokowski, Raymond Gram Swing, Elbert D. Thomas, and Dr. Mary E. Wooley (Gov. Exh. 10).

of a U. S.-U. S. S. R. cold war, began the demands on the Council which led to the indictment in the present case. On November 12, 1945, Brewer, a Committee agent, called at the Council's office and requested that the Council furnish the Committee "a list of the names of those who have donated to your organization, and the amount of each donation, together with a list of the organization's expenditures by name, and amount, for the past twelve months." A day later, this request was confirmed in writing by Ernie Adamson, chief counsel for the Committee (R. 79).

On November 19, 1945, Corliss Lamont, chairman of the Council, replied to Adamson. Lamont stated:

> Since Mr. Brewer stated to Miss Nan Golden of our office staff that your Committee was not investigating the National Council of American-Soviet Friendship, it is a little difficult for me to understand why you should wish to have the information requested. In fact, I am surprised that our National Council should, in any way, shape or manner, be a subject of interest to the Committee on Un-American Activities.
>
> The National Council, which was founded almost four years ago, is a purely American organization trying to educate the people of the United States about our great ally, Soviet Russia, and engaged in the patriotic effort of furthering the aims of our own Government for American-Soviet cooperation and understanding. Our sponsors include some of the most eminent citizens of the U. S. A. Both the U. S. Army and the U. S. State Department have cooperated with us on numerous occasions. Only last week Undersecretary of State Dean Acheson was one of the chief speakers at our Madison Square Garden meeting. President Truman, General Eisenhower and Admiral King sent greetings to the same gathering. And President Roosevelt sent a personal message to a similar rally a year ago.
>
> In view of the above, we naturally expect that your Committee will not desire to pursue this request further. (R. 79-80.)

On November 20, 1945, Adamson answered Lamont with a two-sentence letter:

> I have your letter of November 19. Do you desire to submit the information voluntarily? (R. 80.)

On November 27, 1945, Lamont wrote Adamson that he was taking the matter up directly with the members of the Committee because Adamson's note disclosed "no reason whatsoever" for his demand and there was no indication that Adamson's actions represented an official decision of the Committee (R. 81-82).

On the same date, Lamont wrote each member of the Committee, reviewing the correspondence with Adamson, explaining the objectives and sponsorship of the Council,[2] and suggesting that Adamson's demands were unwarranted (R. 80-81).

Chairman Wood of the Committee replied briefly to Lamont that the Committee had considered the matter and had voted to request access to the Council's books and records. The letter gave no reason for the Committee's interest in the Council's affairs (R. 82).

Representative Mundt, a member of the Committee, also replied to Lamont's letter. He stated in part:

> I am sorry if Mr. Adamson's letter of November 20 appeared to be unnecessarily curt but it does not reflect any disposition on the part of our Committee to look with undue suspicion upon your organization. I note the names of the number of well-known and highly patriotic Americans among your sponsors and directors and I trust you will welcome the opportunity of demonstrating the good work and noble objectives of your organization by complying to the request you will receive. . . . (R. 83).

---

[2] This letter, besides repeating the matters mentioned in Lamont's letter of November 19, 1945, to Adamson, added that "only last week President Truman received at the White House the Council's special guest, the Dean of Canterbury, and myself." (Def. Exh. 75.)

Lamont then replied to Representative Wood that the Council, by unanimous vote of its Board of Directors, had decided not to accede to the Committee's request. The letter stated in part:

> We reiterate that in our opinion the National Council is not a proper subject of interest for your Committee; and we are unable to comprehend how our important work for American-Soviet cooperation and understanding could possibly be considered an un-American activity.
>
> • • • • • • •
>
> The activities of the National Council have been open and nation-wide and reported constantly in the public press. Our organization has nothing to conceal. Your Committee has failed to indicate in what manner the activities of the Council bring it within the scope of the investigation that the House of Representatives has authorized your Committee to make. Nor has your Committee given any reason for its demands upon us, though we have repeatedly asked for one.
>
> The National Council does not, to quote the House resolution on this matter, engage in "un-American propaganda activities." It is not "subversive" in any way; and it does not attack "the principle of the form of government as guaranteed by our Constitution."
>
> Your Committee must be aware that inherent in its request is the inference that helping the American people to understand our Soviet ally and promoting American-Soviet amity are un-American and subversive. For us to yield to a request based on this erroneous inference would not merely cause wanton injury to the work of the National Council, but would also have a deleterious effect upon America's foreign relations and thus be of disservice to our country. In fact, the request of your Committee, if pursued would in itself contribute to the present reckless campaign to undermine those friendly relations between America and Russia upon which the peace of the world depends. (R. 84-85.)

The Committee then issued a subpoena to Lamont, and he appeared before it on January 23, 1946. Lamont left a statement with the Committee (R. 55, 58; Def. Exh. 65), in which he furnished more information about the Council and its activities. He also left with the Committee more than 50 of the Council's publications and a report on and description of all its activities, in support of the contention in his statement that an investigation of the Council's financial and membership affairs was outside the Committee's jurisdiction and that the Committee was injuring the Council in its work and thus "contributing to the present campaign to undermine those friendly relations between America and Russia upon which the peace of the world depends." (R. 55, 58; Def. Exh. 65, p. 3; for list of publications submitted, see Def. Exh. 66, p. 4.)

A week later, Adamson, counsel for the Committee, wrote Lamont as follows:

> Our staff has studied the literature submitted by you, and after due consideration I have come to the conclusion that a substantial part is political propaganda.
>
> I therefore request your attendance before the Committee on February 6 as agreed when you appeared here before the Committee on the 23rd last. (R. 86.)

Lamont again appeared before the Committee on February 6, 1946, and filed with it a statement (Def. Exh. 66) in which he renewed his objections to the Committee's investigation and demand for records. He was also asked, and answered, various questions about the Council (R. 92, 96, 98-99).

The following colloquy which took place at this hearing perhaps best illustrates the position of Committee members and staff with regard to the Committee's right to obtain the financial and membership records of the Council:

> Mr. Mundt: I never heard of your organization, and I am interested, as you are, in improving friendly re-

lationships between the Soviet Union and this country (R. 96).

Mr. Bonner [a Committee member]: He asked you if you were willing to let our investigators go in and make an investigation. This is the only thing that makes me suspicious about these witnesses that come in here and they make a nice witness and I go along with them, and then when they get to the place where they have got something that we want, they want to hide it. I am willing to go along with pretty nearly everything you say myself, but when you have got something you want to hide, I get suspicious.

• • • • • • •

Mr. Bonner: . . . Some organizations, your and one other, have shown considerable reluctance, *which reluctance, in my opinion, is the only element of suspicion about the organization.* I just can't understand why an organization functioning in America should refuse to let a committee of Congress look at its records. (R. 99, emphasis added.)

The colloquy continued, with Mr. Bonner talking:

If you force us to take action we have got to either abolish the committee and say there shouldn't be any investigation at all of anybody anywhere, or else we have got to have a thorough look at the records and arrive at the conclusion that everything is OK. In your case from the evidence you have given us, it probably is.

Mr. Lamont: Well, you see, I just don't understand why you should be investigating us at all. The worst Mr. Adamson says about our literature is that it has political propaganda in it. He didn't say it was un-American or subversive.

Mr. Adamson: That is all I have seen of your records (R. 98; Def. Exh. 16).

A few days later, Representative Mundt wrote Lamont:

I continue to hope and to believe that as your letter says, your organization has nothing to conceal. Frankly,

> it has until very recently been my belief that our investigation of your books would prove that statement to be a fact. I must admit, however, that your persistent effort to take every possible step to keep a shroud of secrecy around your contributors and prevent our representatives from looking at your files have raised some doubts in my mind. In all events, it has been the experience of our Committee that organizations with nothing to conceal are perfectly willing to cooperate with our staff members whereas those about which there seems to be some doubt are inclined to grasp at every technicality to confuse the issue and conceal their supporters and associates. (R. 89.)

On February 6, 1946, the Committee subpoenaed the petitioner to appear before it on February 20 "then and there to testify touching matters of inquiry committed to said Committee" and "to produce all books, records, papers and documents showing all the receipts and disbursements of money by the National Council of American-Soviet Friendship, Inc., and all correspondence, memoranda and communications with any and all persons, together with a complete list of all affiliated organizations, for the year 1945." (R. 18; Gov. Exh. 3.)

By arrangement, petitioner appeared before the Committee on March 6, 1946. This was approximately two weeks after a dinner held by the Council at which the featured speaker was Lt. General Walter Bedell Smith, our then Ambassador-designate to the Soviet Union (R. 18-19, 57, 70-71; Def. Exh. 67).

It is stipulated in the present record that by March 6, 1946, the Council had voluntarily delivered to the Committee substantially all of its publications and written propaganda, and that any Council publications or propaganda not then in the possession of the Committee, whether written or oral, were similar to those the Committee had (R. 5-6, 71, 77-78).

At the March 6 hearing, the petitioner refused to produce the records and papers called for by the Committee, and he presented a statement, subscribed by Lamont and himself, asserting that the demand for the records was unconstitutional and unreasonable and made for the improper purpose of injuring the Council (Def. Exh. 71). The petitioner also challenged the relevancy of the Committee's demands to its jurisdiction (R. 20-36, 58).

At the hearing the petitioner was asked to give the names of the members of the publications committee of the Council responsible for its periodical publication, the "Reporter." When the petitioner objected that the question exceeded the Committee's authority, Representative Mundt explained: "A question of any investigatory scope at all certainly would attach itself to the editor of a publication, about the wisdom of statements of which we have doubts." (R. 31-32.)

After consulting counsel, the petitioner refused to give the names requested, saying in part:

> I decline. This publication is a publication of the Council and will stand on its own merits. I think there is nothing in that statement that in any way can be construed as being un-American or subversive. We are entitled to an opinion, and under our rights under the First Amendment, and on that basis then, unless you can make judgment about that this is satisfactory in proving that to be un-American and subversive, then, if it is not false, beyond that it is not our responsibility to furnish further information. It does not make any difference who wrote that particular article or who the particular committee was that stands behind that article (R. 33-35).

Petitioner was indicted on March 31, 1947. In the year which had intervened since the Committee hearing of March 6, 1946, there had, of course, been profound changes in the

relationships between the United States and the U.S.S.R., and the cold war was well underway.

The trial centered about the question whether the records and information demanded by the Committee were pertinent to the Committee's authority. In this connection, petitioner attempted to introduce evidence that the Committee's demands were made not to fulfill any legislative purpose or the function delegated to it by the House of Representatives, but solely to harass the Council, to burden and hamper its advocacy, and to obtain the names of the Council's contributors and supporters for the purpose of blacklisting and pillorying them. This evidence was excluded by the trial court (R. 121, 122, 124, 128-130, 136).

In furtherance of his attempt to show the illegitimate nature of the Committee's demands, petitioner subpoenaed various materials in the possession of the Committee relating to the Council, including minutes of Committee meetings which decided to request access to the Council's records and which considered petitioner's refusal to comply with the Committee's demands (R. 6-11, 100-103). The subpoena was not honored, and the trial court refused to require that it be complied with or to declare a mistrial because of petitioner's inability to obtain the material sought (R. 11, 103, 104, 136, 137). The prosecution, however, had full access to the files of the Committee and introduced material from these files, including material, not previously available to petitioner, which was claimed to be considered by the Committee when it determined to issue the subpoena (R. 3, 38-39).

Representative Wood, chairman of the Committee at the time of the petitioner's alleged default, testified for the prosecution that there were two factors which caused him to decide that the subpoena should have been issued: that contributions to the Council were tax-deductible and that he considered that propaganda which carried out the purpose stated in the Council's charter "to take specific action

against anti-Soviet propaganda aimed at dividing the United Nations'' was un-American and subversive (R. 3-5, 39).

Petitioner's conviction was affirmed in a per curiam opinion on the faith of the opinion of the Court of Appeals on the appeal of petitioner's first conviction. It is to the earlier opinion, therefore, that one must turn for the reasoning of the Court of Appeals.

In that earlier opinion, the court agreed with petitioner's contention that the Committee could not investigate the internal affairs and records of the Council unless there first existed a jurisdictional basis in the Council's propaganda. The court, however, concluded that such a jurisdictional basis existed. The court stated (176 F. (2d) at 56, 57):

> Obviously the first step in an investigation authorized by House Resolution No. 5 is to determine whether the propaganda being diffused is in fact subversive in the sense of the term as used in the Resolution.
>
> The National Council of American-Soviet Friendship stated one of its objectives as being ". . . . to take specific action against anti-Soviet propaganda aimed at dividing the United Nations.'' That purpose may have been innocent enough in itself; but it was implemented by a flood of propaganda pro-Soviet in character, consistently critical of the foreign policy of the United States. This printed propaganda was in the hands of the Congressional Committee before the issuance of the subpoena for Morford. The National Council's unstinted praise of the communistic regime in Russia, and its comparison of Soviet official behavior with that of the United States to the disparagement of the latter, led logically to the Committee's conclusion that here was such strong indication of an attack on the *principle* of our form of government as to justify inquiry.
>
> Power to investigate the diffusion of subversive propaganda would be sterile indeed if it did not include the right to investigate the person or organization engaged in diffusing it. Having properly decided the

> literature before it was of the nature described in the Resolution, the Committee had the authority to investigate its issuer, the National Council for American-Soviet Friendship.

The passage quoted rests, of course, on a gross misdescription of the facts. It is untrue that the Committee concluded that the Council's propaganda was "subversive" and thus warranted its inquiring into the Council membership and financial affairs. On the contrary, the Committee, as we have seen, repeatedly indicated that it saw nothing "subversive" or even "suspicious" in the Council's propaganda. On the contrary, the Committee clearly asserted its right to investigate the internal affairs of the Council regardless of, and prior to acquaintance with, the nature of its propaganda. The greatest enlightenment it offered was that the Council's refusal to produce its records was an (and the only) element of suspicion, that it believed that its investigation would reveal nothing "subversive," that some of the Council's propaganda was "political," and that it had doubts about the wisdom of some of the expressions.

The Court of Appeals thus invented for the Committee a jurisdictional basis on which the Committee itself had never relied or made a decision.[3] Yet obviously the role of judicial review is to determine whether the Committee's decisions have substantial foundation, not to create for the Committee decisions it never made. The Court of Appeals thus found de novo that propaganda which even the Committee had not disparaged was "subversive." But it is hardly seemly or appropriate for federal courts to enter

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[3] The only basis for jurisdiction suggested by the Chairman of the Committee was the stated purpose of the Council "to take specific action against anti-Soviet propaganda aimed at dividing the United Nations." Strikingly enough the Court said of this purpose that it "may have been innocent enough in itself." (176 F.(2d) at 56.

on the same sordid type of business as the Committee by independently determining that certain expressions are "un-American" or "subversive."

Furthermore, in coming to this conclusion, the Court of Appeals made a fantastic gaffe. It described the Council's propaganda as "pro-Soviet in character, consistently critical of the foreign policy of the United States" and as comparing "Soviet official behavior with that of the United States to the disparagement of the latter." This description is utterly at variance with the record. And the Court of Appeals, in regarding the Council's propaganda, which was consistent with our official foreign policy and endorsed by the administration, as "consistently critical" of our foreign policy has committed the anachronism of assuming that there never was a time when we were not in a cold war with the Soviet Union. And, assuming that the Council's propaganda was in fact "consistently critical" of our foreign policy, the Court completely failed to indicate how or in what manner such propaganda attacked the principle of our form of government or what principle had been attacked, or to indicate how such propaganda was within the jurisdiction of the Committee. Obviously, the Court of Appeals simply equated its own notions as to our correct foreign policy with some basic but necessarily unstatable principle of our form of government.

A similar disregard of the record appears in the court's disposition of the trial court's exclusion of defense evidence offered to show that the Committee was acting not in furtherance of a legislative purpose or to fulfill its delegated inquiry function, but solely to hamper the Council's advocacy and pillory individuals. The Court af Appeals ruled that a "legitimate legislative purpose is presumed" and "cannot be rebutted by impugning the motives of individual members of the Committee." (176 F. (2d) at 58). But the petitioner sought not to impugn the motives of in-

dividual Committee members in conducting a legitimate inquiry within the scope of its authority, but rather to prove that the inquiry was illegitimate and ultra-vires. He wished to prove, but was prevented, that the Committee as a Committee had determined to act not in furtherance of any legislative purpose, but to harass the Council and its supporters. In furtherance of this purpose, he sought to obtain official records of the Committee, but his request was denied.

Jurisdiction

The judgment of the Court of Appeals was entered on July 27, 1950 (R. 140-141). The jurisdiction of this Court is invoked under 28 U. S. Code, section 1254.

Statute and Resolution Involved

(a) Rev. Stat. sec. 102, as amended by c. 594, Act of June 22, 1938, 52 Stat. 942, U. S. C. Title 2, sec. 192:

> Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or, who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months.

(b) House Resolution No. 5, 79th Cong., 1st Sess., 91 Congressional Rec. 10, 15 (1945):

> The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from

time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

The Committee on Un-American Activities shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. Subpoenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by any such chairman, and may be served by any person designated by any such chairman or member.

(The House Committee with the identical authorization as set out above was made a permanent committee by sec. 121(b) of the Legislative Reorganization Act, 60 Stat. 828).

Questions Presented

1. Whether the House Committee on Un-American Activities was authorized, under its enabling resolution, to compel the production of the Council's financial records, communications, and other papers, and to compel disclosure of the identity of the editors of the Council's publications,

even though the Committee had not determined beforehand that the Council's propaganda was "subversive, un-American, or attacked the principle of the form of government as guaranteed by our Constitution" within the meaning of House Resolution 5?

2. Whether it was authorized to compel the production of such papers and the giving of such testimony even though the Council's propaganda was not within the terms of House Resolution 5, and whether the Council's propaganda was of such a nature.

3. Whether it was authorized to compel such production and testimony if the Council's propaganda was consistently critical of the foreign policy of the government, and whether the Council's propaganda was of such a nature.

4. Whether the Committee may compel the production of the records of any organization which disseminates propaganda and may compel testimony concerning the internal affairs of any such organization, regardless of the nature of the propaganda.

5. If the Committee was authorized as stated in paragraphs 1 through 4, whether such several authorizations violate the First, Fifth, Ninth and Tenth Amendments.

6. Whether petitioner was entitled as of statutory or constitutional right to prove that the Committee's demands were not pertinent to the authority of the Committee, were not in aid of a legislative function, and were made only to hamper the Council's advocacy and pillory its supporters.

7. Whether it was a denial of petitioner's rights under the Fifth and Sixth Amendment to refuse petitioner compulsory process to obtain relevant material in the Committee's files and to refuse to declare a mistrial on account of petitioner's inability to obtain such material.

8. Whether the subpoena duces tecum served on petitioner violated the Fourth Amendment because of its vagueness and generality, its failure to specify the papers desired, and the absence of probable cause for a belief that the material sought was pertinent to the Committee's authority.

9. Whether the Committee's authorization and the employment of the criminal sanction for disobedience to its process violate the First, Fourth, Fifth, Ninth or Tenth Amendments.

Reasons for Granting the Writ

The writ should be granted because the issues involved are of great importance and should be decided by this Court, because the decision below contravenes constitutional principles established by decisions of this Court, and because the decision below is inconsistent with the recent decision of the Court of Appeals for the Ninth Circuit in *Brandhove* v. *Tenney*, 183 F. (2d) 121.

In 1935, Mr. Justice Brandeis, in a decision which sustained an exercise of the Senate's power to punish disobedience of its process, sought to alleviate apprehensions that the legislative subpoena might be used for political ends to infringe the liberty of the people. He said (*Jurney* v. *MacCracken*, 294 U. S. 125, 150):

> The apprehensions expressed from time to time in congressional debates, in opposition to particular exercises of the contempt power, concerned, not the power to punish, as such, but the broad, undefined privileges which it was believed might find sanction in that power. The ground for such fears has since been effectively removed by the decisions of this Court which hold that assertions of congressional privilege are subject to judicial review. . . .

In 1950, in a decision which substained a legislative discrimination based on a test oath of political affiliation and

belief, Mr. Chief Justice Vinson, sought to alleviate apprehensions as to the consequences of the Court's decision. He stated (*A. C. A.* v. *Douds*, 339 U. S. 382, 410):

> The answer to the implication that if this statute is upheld "then the power of government over beliefs is as unlimited as its power over conduct and the way is open to force disclosure of attitudes on all manner of social, economic, moral and political issues" is that the result does not follow "while this Court sits."

We ask the Court to redeem these pledges by accepting review of this case. On this record, including, though hardly needing, the offers of proof, "broad, undefined privileges" have found sanction in the Congressional contempt power to the derogation of rights of privacy, of freedom from slander and harassment, and of freedom of advocacy. In this case, though this Court sits, the government has asserted an unlimited power over beliefs and the right to force disclosure of attitudes on political issues.

In this case, the court below has held, on the basis of an irrelevant disquisition that motives of individual Congressmen are unreviewable, that judicial review is not available to determine if a legislative inquiry is beyond the power of the legislature or of the inquiring body. Justice Brandeis asserted for the Court the contrary in *MacCracken's* case, as did *Kilbourn* v. *Thompson*, 103 U. S. 168; *Re Chapman*, 166 U. S. 661; *McGrain* v. *Daugherty*, 273 U. S. 135; and *Sinclair* v. *United States*, 279 U. S. 263.

If the doctrine of these decisions is to be changed, if assertions of Congressional privilege are to be no longer subject to judicial review, then we think this Court should so state.

The cases cited hold that the Congressional inquiry power is limited. The decision below holds that it is unlimited. For it sustains the Committee's investigation of the in-

ternal affairs of an organization even though the Committee had never decided, but instead had repudiated, that any cause existed for the exercise of its jurisdiction. The matter is aggravated, not helped, by the circumstances that the court below invented a jurisdictional basis for the Committee in the face of the facts to the contrary. For in doing so, the court has classified consistent criticism of governmental foreign policy (in a case where such criticism did not exist) as being "subversive," and it has thereby done injury to the principle of our Constitution that governmental authority may not prescribe orthodoxy of opinion. See *W. Va. Bd. of Ed.* v. *Barnette,* 319 U. S. 624, 642, Jackson J. concurring in *Thomas* v. *Collins,* 323 U. S. 516, 545.

What has happened in this case is that the courts have been employed, and have cooperated in, the political hatchetwork against free speech which characterizes the Committee on Un-American Activities. In all truth Morford is not being punished because he has interfered with the legislative function. Instead, he is a political victim of the cold war. Peculiarly enough, however, he is being punished not for obstructing the cold war, but because, like the administration in power and unlike the Committee on Un-American Activities, he sought to foster American-Russian friendship before the cold war began. The decision below is a kind of backward Nuremberg verdict, that those who supported President Roosevelt's policy of amity with the Soviet Union are war criminals of the cold war which later developed. Such a use of our judicial system for political oppression and to punish the exercise of opinion which might be at variance with that held by the Committee warrants, we think, intervention by this Court.

This is not, of course, the only case which has been presented to the Court involving exercises of the authority of the Committee on Un-American Activities to suppress and punish political dissent. In all but the first of these cases,

Eisler's, 335 U. S. 857, the Court has declined to grant certiorari. The decision of Eisler's case was frustrated by his flight from the jurisdiction, but two Justices thought that the issues were so important that they should have been decided nevertheless (338 U. S. 189). In the other cases, the petitioners have served or are serving jail sentences, in what has become an international scandal, as victims of the Committee's ignoble hunt of political dissenters.

This case, we believe, involves in various respects a more extreme employment of the Committee's authority than do those cases in which certiorari was denied. But however that may be, we think the time and occasion have arrived for this Court, in the exercise of its function to protect our democratic liberties, to review an instance in the Committee's campaign of terror. The present case, more than any other, presents to this Court important issues involving the Committee's authority and operation in a form ripe for adjudication. See Frankfurter J. in *Maryland* v. *Baltimore Radio Show,* 338 U. S. 912, 918. The undoubted importance of the questions involved in the exercise of the Committee's powers has been testified to by widespread comment both nationwide and international. And more cases involving the use or abuse of the Committee's power will arise to be presented to this Court. Nor can it be said that the legal issues involved in the exercises of the Committee's powers are not highly controversial. The contrary is attested by the fact that the principal Circuit Court opinions upholding the validity of the Committee were both given by a divided court. *Josephson* v. *United States,* 165 F. (2d) 821 (C. A. 2), *Barsky* v. *United States,* 167 F. (2d) 241 (App. D. C.). The dissenting judges (Judge Charles E. Clark and Judge Edgerton) are judges of great scholarship and standing, and their opinions are marked by great forcefulness and conviction. The subjects have also been examined by numerous

articles in legal publications [4] many of which conclude that the Committee is invalid.

Further, it should be noted that the first case in the Court of Appeals for the District of Columbia, that passed upon the validity of the Committee's authorizing resolution found some difficulty with the phrase "un-American propaganda" as possibly being too vague to be valid, but found sufficient definiteness in the phrase "propaganda that . . . attacks the principle of the form of government as guaranteed by our Constitution," *Barsky* v. *United States*, 167 F. (2d) 241, 247. But if this latter phrase is to be interpreted as it has here as including criticism of the government's foreign policy, such interpretation again poses the question as to whether that phrase has any definite content. Moreover, assuming the validity of the resolution establishing the Committee, this Court has yet to speak on the important question as to the meaning of that resolution and the scope of the Committee's authority. The present case poses sharply the issue of what the scope of that authority is, has it any limits whatsoever, and if so what are the limits.

In our petition for certiorari in *Morford's* first case (No. 236 October Term, 1949), we reviewed other respects in which the decision below applied erroneous principles. In lieu of repeating that material, we ask the Court to reread and consider the matter set forth in our first petition.

It is necessary to add, however, that the Ninth Circuit has recently rendered a decision which is inconsistent with the decision below. In *Brandhove* v. *Tenney*, 183 F. (2d) 121, that court held that a cause of action existed under

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[4] See e.g., 46 Mich. L. Rev. 521; 47 *id.* 191; 33 Cornell L. Q. 565; 17 U. of Cinc. L. Rev. 264; 14 U. of Chi. L. Rev. 256; 43 Ill. L. Rev. 253; 60 Harv. L. Rev, 1193; 47 Col. L. Rev. 416; 37 Georgetown L. J. 104; 1 Baylor L. Rev. 212; 2 Rutgers Q. L. Rev. 125; 27 Neb. L. Rev. 808; 26 Tex. L. Rev. 816; 15 U. of Chi. L. Rev. 544; 34 A. B. A. J. 15; 22 So. Cal. L. Rev. 464.

the Civil Rights Act (8 U. S. C. secs. 43 and 47(3)) for infringement of federal constitutional liberties where a state legislative investigating committee subpoenaed and interrogated an individual not for any legislative purpose but in order to intimidate and smear him and to silence his criticism of certain legislators. The Ninth Circuit thus has recognized that use of the legislature's inquiry power for harassing, non-legislative purposes is a deprivation of constitutional liberties for redress of which the courts are available. In the present case the decision below is to a contrary effect, and the two cases cannot in principle be reconciled.

Conclusion

The writ of certiorari should be granted, and the judgment below should be reversed with the direction that the indictment be dismissed.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 272

RICHARD MORFORD, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

On April 10, 1950, this Court reversed petitioner's conviction under R. S. § 102, 2 U. S. C. 192, for refusing to testify and produce certain records before the Committee on Un-American Activities of the House of Representatives on the sole ground that the District Court denied him an opportunity "to interrogate prospective government employee jurors upon *voir dire* examination with specific reference to the possible influence of the 'Loyalty Order,' Executive Order No. 9835, on their ability to render a just and impartial verdict." *Morford* v. *United States,* 339 U. S. 258. Petitioner was retried before the court, a jury having been waived (R. 140). He